IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2006

CORAM:

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN

Writ Petition Nos.21987 and 21988 of 2006
in OA NO. 2716/96 AND 2718/96

R.Nagarathinam .. Petitioner in
W.P.No.21987 of 2006
(Applicant in OA NO. 2716/96)

M.Jani Basha .. Petitioner in
W.P.No.21988 of 2006
(Applicant in OA NO. 2718/96)

Vs.

1. Government of Tamilnadu
rep. by the Secretary to Government,
Agriculture Department,
Fort St.George, Chennai-9.

2. Chief Engineer (Agricultural
Engineering),
Nandanam,
Chennai-35. .. Respondents in
both the W.Ps. (Respondents
in - do -)

W.P.No.21987 of 2006:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus to direct the respondents to regularise the services of the petitioner with effect from the date of his initial appointment, namely, 3.8.81 duly condoning the break in service from 14.8.89 to 23.8.89 and grant him all consequential benefits including fixation of pay with effect from 3.8.81 and sanction of periodical increments with effect from the said date.

W.P.No.21988 of 2006:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus to direct the respondents to regularise the services of the petitioner with

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effect from the date of his initial appointment, namely, 5.11.81 duly condoning the break in service from 16.8.89 to 10.9.89 and grant him all consequential benefits including fixation of pay with effect from 5.11.81 and sanction of periodical increments with effect from the said date.

For petitioners : Mr.P.Rajendran

For respondents : Mr.V.Arun, Govt. Advocate

O R D E R

The petitioner in W.P. No.21987 of 2006 was originally appointed as a Field Assistant on 03.08.1981 in the Office of the Assistant Executive Engineer (Agricultural Engineering), Soil Conservation Scheme, Kovilpatti. The petitioner in W.P. No.21988 of 2006 was initially appointed as Field Assistant on 05.11.1981 in the same office. Both of them were Approved Probationers in the said post of Field Assistant.

2. The Soil Conservation Sub-Division was wound up with effect from 15.07.1988, as a result of which the Field Assistants working in the Sub-Division were rendered surplus. Similarly, certain posts of Field Assistants in the hill area Development Programme were also disbanded in the year 1988-89. Thus, 20 Nos. of Field Assistants including the petitioners herein were rendered surplus and the petitioners herein were discharged for want of vacancies with effect from 14.08.1989 and 16.08.1989, respectively. However, the petitioners were reappointed as Tractor Cleaners on 24.08.1989 and 11.09.1989, respectively after a small break in service.

3. While the petitioners were working as Tractor Cleaners, certain vacancies arose again in the post of Field Assistants and both the petitioners were reappointed as Field Assistants with effect from 22.11.1993 and 08.11.1993, respectively. After such restoration in the original post, the pay of the petitioners was fixed in the minimum of the time scale of pay of the post of Field Assistants, treating them as fresh appointments for the post of Field Assistants in November 1993. As a result, the entire services rendered by the petitioners for a period of eight years in the post of Field Assistants and four years in the post of Tractor Cleaners, got completely wiped out.

4. Therefore, the petitioners gave representations on 07.09.1995 and 17.03.1995 respectively to the Government, praying for condoning the small break in service in the year 1989 and to grant the benefits of counting their past service for all purposes. Since the petitioners had not received any response to those representations, they filed O.A. Nos.2716 and 2718 of 1996

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on the file of the Tamil Nadu Administrative Tribunal, praying for a direction to the respondents to condone the break in service and to grant the consequential benefits of counting the entire period from the date of initial appointment as service for the purpose of fixing of pay and the sanction of periodical increments. On the abolition of the Tribunal, these applications have been transferred to this Court in W.P.Nos.21987 and 21988 of 2006, respectively.

5. I have heard Mr.P.Rajendran, learned counsel appearing for the petitioner as well as Mr.V.Arun, learned Govt. Advocate appearing for the respondents.

6. The respondents have filed a reply admitting the fact that the petitioners were originally appointed in the year 1981 on a regular basis in the post of Field Assistants and they were actually Approved Probationers. After the petitioners have rendered services for eight years, they were rendered surplus and discharged for want of vacancies, on account of the winding up of the Sub-Division and disbandment of certain posts. After a few days of such discharge, they were appointed in another post, namely, Tractor Cleaner in the year 1989 and they were again restored to their original post of Field Assistant in November 1993. On the date of restoration in November 1993, the pay of the petitioners was fixed in the minimum of the time scale of pay, wiping out the entire past services for a period of twelve years rendered by the petitioners.

7. The only reason stated by the petitioners for wiping out the entire past services of the petitioners is that after the petitioners were rendered surplus, they were reappointed as Tractor Cleaners on humanitarian consideration, after relaxing the Rules for appointment in G.O.Ms.No.1, Agriculture (ASC) Department, dated 03.01.1992. Therefore, according to the respondents, the relaxation takes effect only from the date of the order and hence they were entitled to be fixed only in the minimum of the time scale of pay.

8. But the said stand taken by the respondents is fallacious for the simple reason that the reappointment of the petitioners again to the post of Field Assistants in November 1993, had an impact upon the fixing of their pay and the said impact is not considered by the Government Order in G.O.Ms.No.1. As a matter of fact, there are specific rules both under the General Rules for Tamil Nadu State and Subordinate Services and also in the Fundamental Rules to cover the cases of persons who were discharged for want of vacancies and the manner in which their pay has to be fixed upon reappointment. Unfortunately, the Government had not taken note of the provisions contained in these Rules, while fixing the pay of the petitioners in the post to

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which they were restored.

9. Rule 7 of General Rules for Tamil Nadu State and Subordinate Services, deals with the right of the Probationers and Approved Probationers for reappointment, as the heading given to the Rule itself denotes. The said Rule reads as follows:

> "Right of Probationers and Approved Probationers to reappointment
> A vacancy in any service, class or category not being a vacancy which should be filled by direct recruitment under the Special Rules referred to in clause (a) of Rule 6 shall not be filled by the appointment of a person who has not yet commenced his probation in such service, class or category when an approved probationer or a probationer therein is available for such appointment."

10. In order to reinforce the said Rule position, Rule 8 of Tamil Nadu State and Subordinate Services Rules also provides that the Approved Probationers and the probationers discharged for want of vacancies shall be reappointed as and when vacancies arise. Before amendment, Rule 8(a)(ii) and 8(b) read as follows:

> "8(a)(ii) In other cases the probationers and approved probationers shall be discharged for want of vacancies in the order of juniority."
> "8(b) Approved probationers and probationers who have been discharged for want of vacancies shall be reappointed in vacancies (not being vacancies which should be filled by the direct recruitment under the Special Rules referred to in Rule 6 arise, in the inverse of the order laid down in clause (i) or (ii) of sub-rule (a):"

After the amendment with effect from 17.06.1996, Rule 8, reads as follows:

> "8. Discharge and re-appointment of probationers, approved probationers and full members:-
> (a) Probationers, approved probationers and full members shall be discharged for want of vacancies in the order of juniority.
> (b) Full members, approved probationers and probationers who have been discharged for want of vacancies shall be reappointed in vacancies which arise, in the order of seniority."

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11. Rule 9 also deals with the rights of the members who are absent from duty, either on account of leave or on account of being on foreign service, or on account of deputation or for any other reason. In other words, Rule 9 takes care of the contingencies where a member of a service is absent "for any other reason", and the said person who is absent, is entitled for reappointment, by virtue of Rule 9(a). Rule 9(a) reads as follows:

> "(a) for re-appointment to a substantive or officiating vacancy in the class, category, grade or post in which he may be a probationer or an approved probationer;"

12. Fundamental Rule 26(a) specifically provides that all duty in a post on a time scale counts for increments in that time scale. Note 1 issued under F.R.26(a), under G.O.Ms.No.1072 P and A.R. (FR.III) Dept., dated 31.10.1986, makes the Rule position explicit in the following words:

> "Note 1.-If an officiating Government servant in a post, who has no substantive appointment is discharged from service for want of vacancy, he shall on appointment to the same post, draw the pay last drawn prior to his discharge from service. The periods prior to the discharge from service shall count for purpose of future increment in the time scale of pay of that post."

13. A reading of the above Note 1 in F.R.26(a) makes it clear that even an officiating Government servant, who has no substantive appointment, is entitled to count his past service for the purpose of pay fixation as well as future increments. While that being the case even in respect of officiating Government servants who have no substantive appointment, a similar benefit cannot be denied to the petitioners who were actually Approved Probationers in the post of Field Assistants, by virtue of their regular appointment in the year 1981.

14. Since the Government had not considered the aforesaid Rule position while fixing the pay of the petitioners, at the bottom-most stage, on reappointment in the year 1993, treating the petitioners as fresh entrants, the action of the respondents is totally illegal. Therefore, the petitioners are entitled to the relief prayed for in the Original Applications, now transferred to this Court.

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15. Accordingly, the writ petitions are allowed and the respondents are directed to condone the break in service suffered by the petitioners in the year 1989 and to grant the benefit of pay fixation as well as future increments by counting the entire period of service rendered by them from the date of their initial appointment in the year 1981, as duty for all purposes. Such an exercise shall be done by the respondents and completed within a period of four months from the date of receipt of a copy of this order or on production of this order by the petitioner. No costs.
km

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Secretary to Government,
   Government of Tamilnadu
   Agriculture Department,
   Fort St.George, Chennai-9.

2. Chief Engineer (Agricultural Engineering),
   Nandanam,
   Chennai-35.

+ Two ccs to the Government Pleader sr no. 50105 and 50112
+1 cc to Mr. P. Rajendran, Advocate sr no. 50138

LA(CO)
NM(07.11.2006)

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21988 of 2006

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